

Exhibit K

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CAUSE NO. 2005-38821

ALEJANDRO BENAVIDEZ) IN THE DISTRICT COURT OF
VS.)
RAILSERVE, INC.) HARRIS COUNTY, TEXAS
) 234TH JUDICIAL DISTRICT

ORAL AND VIDEOTAPED DEPOSITION OF

TIMOTHY BENJAMIN

January 18, 2006

Volume 1

ORAL AND VIDEOTAPED DEPOSITION of TIMOTHY
BENJAMIN, produced as a witness at the instance of the
Plaintiff, and duly sworn, was taken in the above-
styled and numbered cause on the 18th day of January,
2006, from 9:12 a.m. to 10:17 a.m., before Jeanne C.
Pearl, CSR in and for the State of Texas, reported by
stenography, at the offices of Sheehy, Serpe & Ware,
2500 Two Houston Center, 909 Fannin, Houston, Texas,
pursuant to the Texas Rules of Civil Procedure.

1601-75415

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1	APPEARANCES	09:11:56 1	THE VIDEOGRAPHER: This is tape number 1
2	FOR THE PLAINTIFF:	09:11:58 2	in the deposition of Tim Benjamin. Today's date is
3	Mr. Wayne D. Collins CADDELL & CHAPMAN	09:12:00 3	January 18th, 2006. The time is 9:12 a.m. We are now
4	1331 Lamar, Suite 1070 Houston, Texas 77010-3027	09:12:04 4	on the record. And the court reporter will swear the
5		09:12:06 5	witness in.
6	FOR THE DEFENDANT:	09:12:06 6	TIMOTHY BENJAMIN,
7	Mr. Raymond A. Neuer SHEEHY, SERPE & WARE, P.C.	09:12:06 7	having been first duly sworn, testified as follows:
8	2500 Two Houston Center 909 Fannin Houston, Texas 77010-1003	09:12:16 8	EXAMINATION
9	ALSO PRESENT: Mr. James Orms	09:12:16 9	BY MR. COLLINS:
10	THE VIDEO TECHNICIAN: Mr. Brandon Good	09:12:16 10	Q. How are you doing? My name is Wayne Collins
11		09:12:20 11	and I represent Alex Benavidez in a case that we filed
12		09:12:22 12	against Railserve. Before we start if there's any
13		09:12:26 13	questions about the questions, that you don't
14		09:12:30 14	understand anything about the question I just asked
15		09:12:32 15	you, please let me know, stop and let's make sure we
16		09:12:34 16	understand each other.
17		09:12:36 17	A. Yes, sir.
18		09:12:36 18	Q. If you need to take a break at any time, let
19		09:12:38 19	me know and we'll take a break and go off the record.
20		09:12:42 20	Is this -- will you state your full name for the
21		09:12:46 21	record?
22		09:12:46 22	A. Timothy James Benjamin.
23		09:12:48 23	Q. Okay. Where do you currently reside?
24		09:12:50 24	A. Noonan, Georgia.
25		09:12:52 25	Q. Okay. What's the address?
Page 3		Page 5	
1	INDEX	09:12:54 1	A. 300 Brookstone Crest.
2		09:13:02 2	Q. How long have you resided there?
3	PAGE	09:13:04 3	A. Since 1998.
4	Appearances..... 2	09:13:06 4	Q. By whom are you currently employed?
5	Index..... 3	09:13:08 5	A. Railserve, Incorporated.
6	TIMOTHY BENJAMIN Examination by Mr. Collins..... 4	09:13:10 6	Q. How long have you been employed by Railserve,
7	Changes..... 46	09:13:12 7	Incorporated?
8	Signature..... 47	09:13:14 8	A. March 26th of 2001.
9	Reporter's Certificate..... 48	09:13:20 9	Q. What position did you hire in on with
10	Further Certificate..... 50	09:13:22 10	Railserve in March, 2001?
11	EXHIBITS	09:13:24 11	A. As controller.
12	NO. DESCRIPTION PAGE	09:13:26 12	Q. Excuse me?
13	1 Rail Switching Agreement..... 14	09:13:26 13	A. As controller.
14	2 Printout of Railserve's website..... 45	09:13:28 14	Q. Controller?
15		09:13:30 15	A. Yes, sir.
16		09:13:30 16	Q. Okay. And what were your job duties as
17		09:13:32 17	controller?
18		09:13:32 18	A. To administrate the financial aspects of
19		09:13:36 19	Railserve.
20		09:13:48 20	Q. Does that include negotiating contracts?
21		09:13:50 21	A. At the time it did not.
22		09:13:52 22	Q. Okay. Does it now include negotiating
23		09:13:54 23	contracts?
24		09:13:56 24	A. Yes, sir.
25		09:13:56 25	Q. For Railserve?

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09:13:58 1	A. Yes, sir.	09:17:02 1	relationship did your testimony have to this matter?
09:13:58 2	Q. When did you start negotiating contracts for	09:17:06 2	A. I testified on behalf of the contractual
09:14:00 3	Railserve?	09:17:10 3	relationship between us and International Paper and the
09:14:02 4	A. At the end of 2001.	09:17:14 4	fact that there was no contractual relationship between
09:14:06 5	Q. So, by December, 2002 you would have been	09:17:16 5	us and CSX.
09:14:08 6	negotiating contracts on behalf of Railserve, Inc.?	09:17:22 6	Q. Okay. When you testified in trial, what case
09:14:12 7	A. Yes, sir.	09:17:24 7	was that?
09:14:14 8	Q. Would that include all contracts?	09:17:24 8	A. I don't remember the employee's name, but the
09:14:16 9	A. Yes.	09:17:28 9	situation was him claiming negligence when the vehicle
09:14:24 10	Q. Okay. What did you do before March of 2001?	09:17:34 10	door opened and he fell out.
09:14:30 11	A. I was --	09:17:38 11	Q. Was Railserve a party in that matter?
09:14:30 12	Q. Go ahead.	09:17:40 12	A. It was Intermodal Transfer.
09:14:32 13	A. I was a divisional controller for Guardian	09:17:48 13	Q. Were you employed with Railserve when you gave
09:14:36 14	Industries.	09:17:50 14	this testimony?
09:14:58 15	Q. As far as your education, what -- do you have	09:17:52 15	A. Yes.
09:15:02 16	a college degree?	09:17:52 16	Q. Okay. Did Railserve have a contractual
09:15:04 17	A. Yes, sir.	09:17:54 17	relationship with Intermodal?
09:15:04 18	Q. What did you receive your degree in?	09:18:04 18	MR. NEUER: Wait a second.
09:15:06 19	A. I have a Bachelor's of Science in general	09:18:08 19	MR. COLLINS: Let's go off the record.
09:15:10 20	management from the University of Buffalo and an MBA in	09:18:12 20	THE VIDEOGRAPHER: It's 9:18, we're off
09:15:14 21	finance, also from the University of Buffalo.	09:18:16 21	the record.
09:15:14 22	Q. Okay. Is it fair to say since that time until	09:18:28 22	(Brief recess.)
09:15:16 23	now you've been doing work as a -- in the financial	09:18:28 23	THE VIDEOGRAPHER: 9:18, we're back on
09:15:22 24	field?	09:18:36 24	the record.
09:15:22 25	A. Yes.	09:18:38 25	Q. (BY MR. COLLINS) Did Railserve have some type
Page 7		Page 9	
09:15:24 1	Q. Okay. Primarily consists of being a	09:18:38 1	of contractual relationship with Intermodal?
09:15:28 2	controller for various companies?	09:18:42 2	A. Not a contractual relationship, no, sir.
09:15:32 3	A. Well, that's including responsibilities	09:18:44 3	Q. What kind of relationship did they have?
09:15:32 4	through that, yes.	09:18:46 4	A. It's another member company, The Marmon Group.
09:15:38 5	Q. Okay. When did you graduate college?	09:18:50 5	Q. And what's The Marmon Group?
09:15:38 6	A. B.S. in '85, MBA in '86.	09:18:50 6	A. Marmon Group.
09:15:50 7	Q. Have you ever given your deposition before?	09:18:50 7	Q. Marmon.
09:15:52 8	A. Yes.	09:18:50 8	A. It's the entity that owns Railserve.
09:15:54 9	Q. How many times?	09:19:02 9	Q. Okay. Is Railserve considered a subsidiary of
09:15:56 10	A. Once as a deposition.	09:19:08 10	The Marmon Group?
09:15:58 11	Q. Have you testified in trial?	09:19:08 11	A. Yes, sir. Technically it's a member company.
09:16:00 12	A. Yes.	09:19:12 12	Q. Define to me what a member company is.
09:16:02 13	Q. Okay. How many times?	09:19:14 13	A. I don't believe that I really can. On our
09:16:02 14	A. Once.	09:19:18 14	letterhead and what we're authorized to do, we're
09:16:06 15	Q. All right. What case did you testify in	09:19:22 15	authorized to say we're a member company of The Marmon
09:16:08 16	deposition?	09:19:28 16	Group.
09:16:12 17	A. We were not a named defendant. This was an	09:19:28 17	Q. Does The Marmon Group own all the stock of
09:16:14 18	employee of one of our locations in Savannah that was	09:19:32 18	Railserve?
09:16:18 19	suing CSX for a defective hand hold on a boxcar.	09:19:34 19	MR. NEUER: Form.
09:16:44 20	Q. Was he suing under FELA, do you remember?	09:19:38 20	Q. (BY MR. COLLINS) You can go ahead and answer.
09:16:48 21	A. I don't recall.	09:19:40 21	A. I honestly don't know how that structure is
09:16:50 22	Q. Was it safe to assume that Railserve had a	09:19:42 22	designed. I can tell you we're 100 percent owned of an
09:16:52 23	contract with CSX?	09:19:48 23	entity within that group.
09:16:54 24	A. No, sir.	09:19:50 24	Q. 100 percent owned of an entity of that group,
09:16:56 25	Q. Okay. How did the employee -- how -- what	09:19:54 25	can you explain that to me?

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		Page 10	Page 12
09:19:56 1	A. Somewhere within The Marmon Group --	09:23:16 1	trying to go down the list in order of size and the
09:19:56 2	Q. Uh-huh.	09:23:18 2	smaller ones aren't coming to me.
09:19:58 3	A. -- there is an entity that owns 100 percent of	09:23:22 3	Q. Okay. And this group, is it fair to say this
09:20:00 4	Railserve stock.	09:23:26 4	group all deals with transportation services?
09:20:06 5	Q. And who would be the best person to tell me	09:23:30 5	A. No, sir.
09:20:08 6	the structure of The Marmon Group and how Railserve	09:23:30 6	Q. What else do they deal with?
09:20:12 7	fits in?	09:23:32 7	A. Here's a good example. Amarillo Wind Gear is
09:20:12 8	A. I would advise that to be Robert Webb who is	09:23:36 8	a company that makes wind gears.
09:20:16 9	the chief legal counsel for Marmon.	09:23:46 9	Q. Okay. And this Transportation Services, I'm
09:20:24 10	Q. How long has Railserve been a member of The	09:23:48 10	sorry, I didn't catch the name, Transportation
09:20:30 11	Marmon Group?	09:23:50 11	Services?
09:20:30 12	A. 1994, I believe.	09:23:50 12	A. And Engineered Products.
09:20:48 13	Q. Was Railserve an entity that was acquired by	09:23:52 13	Q. Engineered Products?
09:20:52 14	The Marmon Group? It was an independent entity and	09:23:52 14	A. Uh-huh.
09:20:56 15	then acquired by The Marmon Group?	09:23:54 15	Q. Group is a group of entities within The Marmon
09:20:58 16	A. No, sir.	09:23:58 16	Group?
09:20:58 17	Q. Okay. How did that work then?	09:23:58 17	A. Yes, sir.
09:21:00 18	A. Trackmobile is another member company of	09:24:26 18	Q. Okay. Okay. You're familiar with the Deer
09:21:04 19	Marmon which developed Railserve as an entity.	09:24:34 19	Park Rail Terminal, correct?
09:21:14 20	Q. Okay. Was Trackmobile acquired by The Marmon	09:24:34 20	A. Yes, sir.
09:21:18 21	Group?	09:24:36 21	Q. Okay. And there's an entity called the Deer
09:21:18 22	A. I don't know how they came into being part of	09:24:38 22	Park Rail Terminal, correct?
09:21:22 23	the group.	09:24:40 23	A. Yes, sir.
09:21:32 24	Q. Okay. As far as Railserve, you're the	09:24:40 24	Q. All right. And that entity is owned by U.S.
09:21:34 25	controller now?	09:24:42 25	Development, correct?
		Page 11	Page 13
09:21:36 1	A. My technical title is vice-president of	09:24:44 1	A. I believe that to be true.
09:21:38 2	finance and controller.	09:24:48 2	Q. Okay. And the Deer Park Rail Terminal --
09:21:48 3	Q. And how many vice-presidents are there? You	09:24:52 3	okay. Just for purposes of clarification for this
09:21:54 4	can approximate if you need to.	09:24:56 4	deposition, I want to make sure we got these terms
09:21:56 5	A. Five.	09:24:58 5	clear. There's a Deer Park Rail Terminal which is the
09:21:58 6	Q. And who do you report to?	09:25:02 6	location that's over there near Deer Park and it's a
09:22:00 7	A. I report to Ken Fischl.	09:25:06 7	rail terminal. You're familiar with that, right?
09:22:02 8	Q. What is Ken Fischl's role?	09:25:08 8	A. I've been there once.
09:22:06 9	A. He is the sector president. Fischl, by the	09:25:10 9	Q. Okay. And then there's an entity that's
09:22:14 10	way, is spelled F I S C H L.	09:25:12 10	called the Deer Park Rail Terminal, Inc., right?
09:22:18 11	Q. Okay. Who does he report to, if you know?	09:25:14 11	A. They are one and the same to me.
09:22:20 12	A. I don't know, sir.	09:25:22 12	Q. Okay. As far as this deposition is concerned,
09:22:22 13	Q. Okay. Is he considered the head of the	09:25:26 13	can we agree that if I'm referring or if we're
09:22:24 14	company, head of Railserve?	09:25:28 14	referring to the actual physical location, we'll refer
09:22:26 15	A. No. He's the head of the group of which	09:25:34 15	to that as the Deer Park Rail Terminal and if we're
09:22:30 16	Railserve is a part.	09:25:36 16	referring to the entity, we're referring to the Deer
09:22:36 17	Q. And what group is that?	09:25:40 17	Park Rail Terminal, Inc.
09:22:38 18	A. Transportation Services and Engineered	09:25:40 18	A. Physical location versus the legal
09:22:40 19	Products.	09:25:42 19	designation.
09:22:48 20	Q. And what other entities are a member of that	09:25:44 20	Q. Exactly.
09:22:50 21	group?	09:25:44 21	A. Yes, sir.
09:22:54 22	A. Union Tank Car, Trackmobile, Penn Machine,	09:25:46 22	Q. Okay. I just want to make sure we're clear on
09:23:02 23	Enersul, Procor.	09:25:50 23	that. All right. You recall that in December 3rd,
09:23:10 24	Q. Anyone else?	09:25:52 24	2002 Railserve entered into a contract with Deer Park
09:23:12 25	A. There are a few others whose names -- I'm	09:25:58 25	Rail Terminal, Inc., correct?

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09:26:00 1	A. Yes.	09:28:28 1	A. Yes, sir.
09:26:04 2	Q. Okay.	09:28:28 2	Q. What does that mean to you?
09:26:04 3	A. And I hesitate because I'm not sure if it's an	09:28:30 3	A. It means that as part of the list of cars Deer
09:26:06 4	Inc. or an L.L.C., but yes.	09:28:34 4	Park Rail Terminal would like placed in a specific
09:26:10 5	Q. Okay. I'll show you the agreement.	09:28:36 5	location, you'll need to take one car from the midst of
09:26:10 6	A. Okay.	09:28:40 6	a stream of cars and place it in a separate spot.
09:26:10 7	Q. I'm not trying to trick you.	09:28:44 7	Q. And Railserve was doing that at the Deer Park
09:26:16 8	MR. COLLINS: You want to start these	09:28:46 8	Rail Terminal, correct?
09:26:18 9	with number 1 or you want to leave off where we left	09:28:48 9	A. Yes, sir.
09:26:20 10	off on the other one?	09:28:48 10	Q. And Railserve was going to provide I believe
09:26:24 11	MR. NEUER: Why don't we do mine as	09:28:56 11	two locomotives to do that with?
09:26:26 12	Defendant's 1 and yours as Plaintiff's 1 and we'll just	09:29:00 12	A. Railserve owns two locomotives that are there,
09:26:30 13	each number consecutively.	09:29:02 13	yes.
09:26:30 14	MR. COLLINS: Okay.	09:29:04 14	Q. Okay. Are there other locomotives there?
09:26:34 15	MR. NEUER: How does that sound?	09:29:08 15	A. No, sir.
09:26:34 16	MR. COLLINS: Sounds great.	09:29:08 16	Q. Is there any other entity as far as you know
09:26:34 17	(Plaintiff's Exhibit 1 marked.)	09:29:10 17	performing switching operations at the Deer Park Rail
09:26:46 18	Q. (BY MR. COLLINS) I've handed you what's been	09:29:14 18	Terminal other than Railserve, Inc.?
09:26:48 19	marked as exhibit, Plaintiff's Exhibit Number 1. Do	09:29:18 19	A. No, sir.
09:26:52 20	you recognize that document?	09:29:34 20	Q. If you'll look at paragraph Roman number 1A,
09:26:54 21	A. Yes, sir.	09:29:40 21	just go ahead and read that first paragraph there and
09:26:54 22	Q. Okay. And what is that document for the	09:29:44 22	I'll ask you a few questions about it.
09:26:56 23	ladies and gentlemen of the jury?	09:30:08 23	A. Okay.
09:26:56 24	A. This is the rail switching agreement between	09:30:08 24	Q. Okay. In the first sentence it says operator
09:27:00 25	Deer Park Rail Terminal, Inc. and Railserve, Inc.	09:30:12 25	hereby agrees -- and operator for the term is defined
Page 15		Page 17	
09:27:08 1	Q. Okay. We're going to go through this	09:30:14 1	as Railserve, Inc., correct?
09:27:08 2	contract, but in your own words will you describe for	09:30:22 2	A. Yes, sir.
09:27:12 3	me your understanding of the services Railserve, Inc.	09:30:26 3	Q. Okay. And the first part of it, little letter
09:27:16 4	was providing to the Deer Park Rail Terminal per this	09:30:30 4	i, it says all switching and movement services. What
09:27:20 5	contract?	09:30:32 5	is meant by movement services?
09:27:24 6	A. Sure. We will engage with Deer Park Rail	09:30:36 6	MR. NEUER: Form. Go ahead and answer.
09:27:26 7	Terminal to provide switching services for that	09:30:38 7	A. To us they're synonymous. They request us to
09:27:28 8	location based on the scope of work agreed upon between	09:30:42 8	place a car in a spot.
09:27:34 9	the two parties.	09:30:44 9	Q. (BY MR. COLLINS) Okay.
09:27:38 10	Q. And when you say switching services, what do	09:30:46 10	A. So, we will switch that car to that spot.
09:27:42 11	you mean by that term?	09:30:50 11	Q. Before we go any further, were you aware of
09:27:42 12	A. Deer Park Rail Terminal will give us a list of	09:30:54 12	this contract when it was being negotiated?
09:27:46 13	cars that they want placed on certain spots or certain	09:30:58 13	A. Yes, sir.
09:27:50 14	tracks. We will arrange the cars to their request	09:30:58 14	Q. Okay. Did you read it before it was signed?
09:27:56 15	inside their owned or leased space.	09:31:02 15	A. Yes, sir.
09:28:08 16	Q. And this switch -- this would include coupling	09:31:02 16	Q. Okay. Did you make any changes to this
09:28:10 17	cars, correct?	09:31:04 17	contract before it was signed?
09:28:12 18	A. Yes, sir.	09:31:06 18	A. I'm sure we did.
09:28:14 19	Q. Okay. And this would include cutting certain	09:31:08 19	Q. Okay. Who would have been involved in
09:28:16 20	cars out to be put on the main track, correct?	09:31:10 20	negotiating this contract with you?
09:28:20 21	MR. NEUER: Form.	09:31:12 21	A. It would have been myself.
09:28:22 22	Q. (BY MR. COLLINS) You can go ahead.	09:31:16 22	Q. Just you?
09:28:22 23	A. Can you restate the question, please?	09:31:18 23	A. I'm sorry, I was waiting for you to write. It
09:28:24 24	Q. Yeah. I mean, are you familiar with the term	09:31:20 24	would be me with Dan Borgen.
09:28:26 25	cutting out cars?	09:31:20 25	Q. Okay.

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09:31:22 1	A. And Paul Tucker from U.S. Development.	09:34:14 1	A. I would start with Paul Tucker, Dan Borgen and
09:31:28 2	Q. And who is Dan Borgen?	09:34:18 2	they can redirect from there.
09:31:30 3	A. He's one of the principals for U.S.	09:34:38 3	Q. Okay. And then the next sentence says, the
09:31:34 4	Development.	09:34:40 4	little letter i, two little i, any other tasks for
09:31:36 5	Q. Okay. And, in fact, your signature is on the	09:34:44 5	services reasonably requested by Deer Park Rail
09:31:38 6	last page of this contract, correct?	09:34:50 6	Terminal related to the operation of the terminal
09:31:40 7	A. Yes, sir.	09:34:52 7	during the term of this agreement or any extension
09:31:40 8	Q. Okay. With the title controller?	09:34:54 8	thereof. And my question is do you have an
09:31:42 9	A. Yes, sir.	09:34:58 9	understanding what services were reasonably requested
09:31:56 10	Q. All right. Okay. And in that same sentence,	09:35:02 10	or may have been reasonably requested?
09:31:58 11	I'm going to read the whole sentence and I'll ask the	09:35:06 11	MR. NEUER: Form.
09:32:00 12	question. All switching and movement services for any	09:35:08 12	Q. (BY MR. COLLINS) You can go ahead and answer.
09:32:02 13	and all railcars located within the Deer Park Rail	09:35:10 13	A. Can you restate the question for me, please?
09:32:06 14	Terminal regardless of ownership. What does regardless	09:35:12 14	Q. In that sentence I'm trying to figure out in
09:32:10 15	of ownership mean in this context?	09:35:14 15	your mind did you have an understanding of what
09:32:14 16	MR. NEUER: Form.	09:35:16 16	services may be reasonably requested?
09:32:14 17	Q. (BY MR. COLLINS) You can go ahead and answer.	09:35:22 17	A. The first and foremost that I know we did do
09:32:16 18	A. That we will move a car that is owned by an	09:35:24 18	there is provide yardmaster duties.
09:32:18 19	entity that may not necessarily be Deer Park Rail	09:35:28 19	Q. Okay. What does yardmaster duties include?
09:32:20 20	Terminal.	09:35:30 20	A. That is the person that will take the switch
09:32:30 21	Q. Do you know if Deer Park Rail Terminal owned	09:35:34 21	list prepared by Deer Park Rail Terminal, get the
09:32:32 22	any of the cars that were on the terminal, in Deer Park	09:35:40 22	switch list to the crews and then be the one that will
09:32:36 23	Rail Terminal?	09:35:46 23	communicate with the Port Terminal Railroad for when
09:32:36 24	A. I do not know if they do or don't.	09:35:48 24	they're dropping off inbound or picking up outbound.
09:32:44 25	Q. You do know that Railserve at the Deer Park	09:35:58 25	Q. And who are the yardmasters for Deer -- for
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09:32:48 1	Rail Terminal moves cars that are owned other by --	09:36:04 1	Railserve at the Deer Park Rail Terminal in April of
09:32:52 2	owned by other entities other than Deer Park Rail	09:36:08 2	2005?
09:32:58 3	Terminal, though, correct?	09:36:08 3	A. I only know one by name.
09:32:58 4	A. Yes, we do switch cars owned by other	09:36:10 4	Q. Who is that?
09:33:02 5	entities.	09:36:10 5	A. Mike Henderson.
09:33:06 6	Q. Okay. Would you agree that that constitutes a	09:36:12 6	Q. Mike Henderson. Were there any other duties
09:33:08 7	majority of the switching activities that Railserve	09:36:22 7	besides switching and yardmaster duties at the Deer
09:33:10 8	does at the Deer Park Rail Terminal?	09:36:26 8	Park -- that Railserve performed at the Deer Park Rail
09:33:14 9	A. I don't understand the question.	09:36:30 9	Terminal?
09:33:14 10	Q. Okay. Does the majority of the work that	09:36:30 10	A. Not to the best of my knowledge.
09:33:20 11	Railserve does at the Deer Park Rail Terminal involve	09:37:06 11	Q. Did Railserve help load cars at the Deer Park
09:33:24 12	moving cars owned by entities other than the Deer Park	09:37:10 12	Rail Terminal?
09:33:30 13	Rail Terminal?	09:37:10 13	A. Not to the best of my knowledge.
09:33:30 14	A. Very well. I believe the preponderance of the	09:37:16 14	Q. Are you saying like, no, that didn't happen or
09:33:34 15	switching is done by cars owned by other than Deer Park	09:37:20 15	I don't know one way or the other?
09:33:40 16	Rail Terminal.	09:37:22 16	A. I don't believe that it happened.
09:33:50 17	Q. Okay. Do you have any idea who owned -- what	09:37:34 17	Q. Okay. Were you aware that Deer Park Rail
09:33:54 18	entities owned the cars that are switched at the Deer	09:37:36 18	Terminal ever lined up cars to have -- tank cars to
09:33:58 19	Park Rail Terminal by Railserve?	09:37:40 19	have various petrochemical liquids pumped into them?
09:34:00 20	A. No, sir.	09:37:44 20	Is that possible?
09:34:00 21	Q. Who would know that?	09:37:46 21	A. I'm aware that they have asked us to spot cars
09:34:02 22	A. The management of Deer Park Rail Terminal.	09:37:48 22	in a place that facilitated loading.
09:34:10 23	Q. Do you know any particular people who that	09:38:08 23	Q. And in those cases are you aware who was doing
09:34:12 24	would be or just the management at Deer Park Rail	09:38:12 24	the actual loading of the cars?
09:34:14 25	Terminal?	09:38:14 25	A. No, I do not know.

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09:38:16 1	Q. Okay. Do you know whose product was being	09:41:16 1	and maintain that classification, correct?
09:38:18 2	loaded into the cars?	09:41:20 2	A. Yes, sir.
09:38:20 3	A. I believe it's Shell's product.	09:41:20 3	Q. Okay. And explain to me what classification
09:38:34 4	Q. And when you say Shell, you're referring to	09:41:26 4	is being made or what that entails.
09:38:38 5	Shell Oil?	09:41:28 5	A. The basis of the classification I can't speak
09:38:40 6	A. Yes.	09:41:30 6	to. I do know that the crews are given a switch list
09:38:40 7	Q. With various entities that may include. Okay.	09:41:34 7	which is predicated on that classification. Now, how
09:38:56 8	I want you to go down to paragraph B on the same page.	09:41:36 8	they're classified, I don't know.
09:38:58 9	It says operator shall initiate and maintain a service	09:41:38 9	Q. So, is it fair to say that Railserve needs to
09:39:02 10	quality management process which shall include without	09:41:42 10	keep track of the cars and their classifications that
09:39:06 11	limitation abiding by objective performance measures	09:41:44 11	are on the Deer Park Rail Terminal?
09:39:08 12	and periodic reporting of service performance measures	09:41:48 12	A. Yes.
09:39:12 13	to Deer Park Rail Terminal. What were the service	09:42:10 13	Q. Okay. And the next sentence talks about shall
09:39:18 14	quality management processes that y'all were going to	09:42:14 14	be accurately switched to make outbound movements?
09:39:22 15	maintain, that Railserve was going to maintain?	09:42:18 15	A. I'm sorry, where are you?
09:39:30 16	A. There are a number of things in the	09:42:20 16	Q. Number 2 right under number 1.
09:39:32 17	operational level which I know go on, but I can't	09:42:26 17	A. Okay.
09:39:36 18	delineate what they are.	09:42:28 18	Q. It says shall be accurately switched to make
09:39:38 19	Q. Okay.	09:42:32 19	outbound movements. Where are those outbound movements
09:39:38 20	A. I can only speak to meetings I've been	09:42:36 20	going?
09:39:40 21	involved in.	09:42:36 21	A. I have no idea. Our services are constrained
09:39:40 22	Q. Okay. Speak to those. To the best of your	09:42:42 22	to the yard itself, so once we classify --
09:39:44 23	knowledge I'm trying to figure out what that term	09:42:44 23	Q. Well, who is picking up the outbound
09:39:46 24	entails.	09:42:46 24	movements?
09:39:46 25	A. First of all, they want to make sure we're	09:42:48 25	A. Port Terminal Railroad.
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09:39:50 1	safe as do we.	09:43:00 1	Q. Do you know where Port Terminal Railroad takes
09:39:50 2	Q. Uh-huh.	09:43:02 2	them?
09:39:52 3	A. So, if there's any incidents out there either	09:43:04 3	A. No, sir.
09:39:54 4	caused by us or caused by another party, if there's a	09:43:06 4	Q. You do know that those -- once it goes through
09:39:56 5	problem with a track, we need to discuss those to make	09:43:10 5	the Port Terminal Railroad it can't end up on a
09:39:58 6	sure we can work together to maintain a safe operation.	09:43:14 6	Burlington North track or Union Pacific track, correct?
09:40:00 7	So, I know if there's any incidents out there, we'll	09:43:18 7	A. I don't know where they go. Those sound like
09:40:04 8	report with each other.	09:43:20 8	plausible options once they leave.
09:40:06 9	Q. Okay.	09:43:30 9	Q. Any trains, cars brought in to the Deer Park
09:40:06 10	A. I also know that if there's problems getting	09:43:34 10	Rail Terminal, where are they brought from?
09:40:10 11	the cars turned -- getting the cars switched and	09:43:36 11	A. The Port Terminal drops them off. I don't
09:40:16 12	classified in an appropriate manner, that will also be	09:43:38 12	know where they come from.
09:40:18 13	a discussion point.	09:43:46 13	Q. Does the Deer Park Rail Terminal as far as you
09:40:22 14	Q. Okay. Anything else?	09:43:48 14	know, the Deer Park Rail Terminal, Inc. entity
09:40:26 15	A. None that I've been involved in.	09:43:56 15	manufacture anything?
09:40:36 16	Q. Okay. If you go down, there's a number 1 in	09:44:02 16	A. No, sir.
09:40:38 17	the second paragraph that says classification of	09:44:02 17	Q. Do they own any goods to be hauled as far as
09:40:42 18	railcars within the terminal shall be maintained at all	09:44:06 18	you know?
09:40:44 19	times and shall be audited weekly by DPRT. Is it fair	09:44:08 19	MR. NEUER: Form.
09:40:52 20	to assume that that classification of railcars within	09:44:08 20	Q. (BY MR. COLLINS) You can go ahead and answer.
09:40:54 21	the terminal shall be maintained by Railserve?	09:44:10 21	A. Not to the best of my knowledge.
09:41:00 22	A. Can you ask that question again, please?	09:44:14 22	Q. To the best of your knowledge, what's your
09:41:02 23	Q. Yeah. I mean, the question I have is	09:44:16 23	understanding of their business? What do they do?
09:41:10 24	Railserve was going to -- was required under this	09:44:18 24	A. They store railcars.
09:41:14 25	contract to classify the railcars within the terminal	09:44:24 25	Q. They store railcars and also line them up to

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09:44:28 1	be put on outbound shipments, correct?	09:48:02 1	Q. Okay.
09:44:30 2	MR. NEUER: Form.	09:48:04 2	MR. NEUER: You have to say out loud,
09:44:32 3	Q. (BY MR. COLLINS) You can go ahead and answer.	09:48:06 3	Tim.
09:44:34 4	A. Well, obviously if something is going to be	09:48:06 4	A. I'm sorry, yes, sir.
09:44:36 5	stored, it's eventually going to be shipped.	09:48:10 5	Q. (BY MR. COLLINS) Then the next sentence, it
09:44:36 6	Q. Okay.	09:48:12 6	says railcars ordered for delivery to internal terminal
09:44:38 7	A. And that methodology of eventually getting it	09:48:18 7	transload tracks. What's transload tracks?
09:44:40 8	out is going to be part of the switching process.	09:48:20 8	A. I don't know.
09:44:48 9	Q. Do you know how long the cars are typically	09:48:26 9	Q. From the terminal storage tracks. What is
09:44:50 10	stored at the Deer Park Rail Terminal?	09:48:28 10	that?
09:44:54 11	A. No, sir.	09:48:30 11	A. That I'm presuming to be any one of the number
09:44:54 12	Q. Can you approximate it?	09:48:32 12	of tracks that are inside Deer Park Terminal owned or
09:44:56 13	A. No, sir.	09:48:38 13	leased property.
09:44:56 14	MR. NEUER: Form.	09:48:44 14	Q. Then number 5, it talks about the inbound
09:44:58 15	Q. (BY MR. COLLINS) Does it vary among cars?	09:48:46 15	delivery point. Do you know where that is?
09:45:00 16	A. I have absolutely no idea.	09:48:50 16	A. I don't know where it is, no.
09:45:02 17	Q. Who would be the best person to answer that	09:48:50 17	Q. Do you know what that is?
09:45:04 18	question?	09:48:52 18	A. It's the converse of the outbound point. It's
09:45:04 19	A. Paul Tucker and Dan Borgen.	09:48:54 19	a track designated to accept cars being delivered by
09:45:24 20	Q. Okay. We're going to the next page, number 2.	09:49:00 20	the Port Terminal Railroad Association.
09:45:28 21	And at the top of the page there's a sentence number 3.	09:49:06 21	Q. Okay. And do you have an understanding of
09:45:32 22	MR. COLLINS: Before we do that I need to	09:49:06 22	what the Port Terminal Railroad Association does?
09:45:34 23	take a break. I need to get some water.	09:49:12 23	A. Yes.
09:45:38 24	THE VIDEOGRAPHER: It's 9:45, we're off	09:49:12 24	Q. And what is that?
09:45:42 25	the record.	09:49:12 25	A. To the best of my knowledge, they're a short
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09:46:36 1	(Brief recess.)	09:49:14 1	line railroad that will transport cars through and
09:46:36 2	THE VIDEOGRAPHER: Back on the record at	09:49:20 2	along the Houston Ship Channel.
09:46:46 3	9:46.	09:49:26 3	Q. And they also have connections to outbound
09:46:48 4	Q. (BY MR. COLLINS) Okay. Paragraph number 3	09:49:28 4	tracks owned by various railroad companies, correct?
09:46:50 5	says railcars ordered for shipment outbound from the	09:49:32 5	A. I'm sorry?
09:46:54 6	terminal shall be selected, placed and made available	09:49:36 6	MR. NEUER: Form.
09:46:56 7	at the outbound delivery point. We'll stop there.	09:49:38 7	Q. (BY MR. COLLINS) Port Terminal Railroad also
09:47:00 8	What's your understanding of the outbound delivery	09:49:38 8	has tracks that lead to Union Pacific and Burlington
09:47:04 9	point?	09:49:44 9	North tracks, correct?
09:47:04 10	A. There is a track that's designated for the	09:49:46 10	MR. NEUER: Form.
09:47:08 11	point at which Port Terminal Railroad will come in and	09:49:46 11	A. I do know they will connect with other class
09:47:10 12	pick up a unit.	09:49:48 12	one railroads. I don't know specifically which ones
09:47:18 13	Q. Okay. And further on in that sentence, an	09:49:50 13	they are.
09:47:22 14	order, specified in the order within four hours after	09:50:24 14	Q. (BY MR. COLLINS) This contract requires
09:47:26 15	the original time of the order. What's the purpose of	09:50:28 15	Railserve to provide two switching locomotives at the
09:47:30 16	that time requirement, if you know?	09:50:34 16	Deer Park Rail Terminal. Does in fact Railserve do
09:47:32 17	A. No, sir, I don't know.	09:50:36 17	that at the Deer Park Rail Terminal?
09:47:38 18	Q. But can I read that or understand that to mean	09:50:38 18	A. Yes, sir.
09:47:42 19	once Railserve receives an order, it has to be there	09:50:44 19	Q. And whose responsibility is it to maintain and
09:47:46 20	within four hours, correct, to be on the outbound, at	09:50:46 20	operate those locomotives?
09:47:50 21	the outbound delivery point?	09:50:50 21	A. Railserve's.
09:47:52 22	A. Yeah.	09:50:50 22	Q. Okay. Exclusive responsibility?
09:47:54 23	Q. Okay. Unless it's received after the normal	09:50:58 23	A. Yes, sir.
09:47:56 24	day shift and there's some more time allowed, correct?	09:51:02 24	Q. Okay. Let's go to page 3. Roman numeral V and
09:47:56 25	A. Uh-huh.	09:51:10 25	it says compensation. It says monthly fee, the

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09:51:14 1	operator shall be paid a monthly fee in arrears.	09:54:00 1	Inc. has any personnel who are switch -- doing
09:51:20 2	During the initial term the monthly fees shall be	09:54:04 2	switching operations at the Deer Park Rail Terminal?
09:51:22 3	\$45,500, correct?	09:54:06 3	A. Absolutely not.
09:51:26 4	A. That's what it says, yes, sir.	09:54:08 4	Q. Okay. The only people, entity, doing
09:51:28 5	Q. And does Deer Park Rail Terminal pay Railserve	09:54:12 5	switching operations at the Deer Park Rail Terminal is
09:51:34 6	\$45,500 per month?	09:54:16 6	Railserve, correct?
09:51:36 7	A. Can you ask what point in time you're asking?	09:54:16 7	A. Correct.
09:51:40 8	Q. From the beginning of this contract until	09:54:20 8	Q. Okay. Does anybody from Deer Park Rail
09:51:42 9	April, 2005?	09:54:26 9	Terminal, Inc. in any way supervise or monitor the
09:51:44 10	A. At the beginning of the contract that's a true	09:54:32 10	activities of Railserve on the property?
09:51:46 11	statement.	09:54:34 11	MR. NEUER: Form.
09:51:48 12	Q. Okay. When did that change?	09:54:36 12	Q. (BY MR. COLLINS) You can go ahead and answer.
09:51:50 13	A. At some point, I can't tell you when, the	09:54:36 13	A. You asked supervise or monitor. Supervise,
09:51:52 14	scope of work expanded to be two 12-hour shifts and the	09:54:40 14	no.
09:51:56 15	compensation rate changed because the scope of work	09:54:40 15	Q. Okay.
09:51:58 16	increased.	09:54:42 16	A. We are a contractor. We're a separate
09:51:58 17	Q. Was there a writing to reflect that?	09:54:42 17	contractor.
09:52:00 18	A. I don't believe there is.	09:54:44 18	Q. All right.
09:52:04 19	Q. Okay. So, this is the contract under which	09:54:44 19	A. Independent of Deer Park Rail Terminal,
09:52:06 20	you're operating, correct?	09:54:46 20	Incorporated. So, therefore, it's subject to the rules
09:52:08 21	A. Yes, sir.	09:54:48 21	of this independent contract. Supervision is a much
09:52:08 22	Q. Okay. But there was an expansion of the shift	09:54:52 22	more difficult question to answer. They're our
09:52:10 23	hours?	09:54:54 23	customer.
09:52:12 24	A. Yes.	09:54:54 24	Q. Okay.
09:52:12 25	Q. Okay. And what is Railserve being paid now	09:54:54 25	A. So, being our customer they have the right to
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09:52:14 1	for its services at the Deer Park Rail Terminal?	09:54:56 1	monitor the performance they're receiving.
09:52:18 2	A. Roughly \$89,000 per month flat fee.	09:55:00 2	Q. Do they -- are you aware of any audits or any
09:52:24 3	Q. And when did that start?	09:55:02 3	kind of inspections that Deer Park Rail Terminal, Inc.
09:52:24 4	A. I don't know.	09:55:06 4	does of your performance?
09:52:26 5	Q. Was it -- do you know if it was before or	09:55:08 5	A. No, sir.
09:52:28 6	after April of 2005?	09:55:12 6	Q. Okay. Do you know who within Deer Park Rail
09:52:30 7	A. It was before.	09:55:14 7	Terminal, Inc. monitors the performance of Railserve?
09:52:46 8	Q. Okay. Was Alex Benavidez an employee of	09:55:18 8	A. Brent Tucker and Paul Tucker are the primary
09:52:48 9	Railserve, Inc.?	09:55:20 9	parties.
09:52:50 10	A. Is he or was he?	09:55:22 10	Q. Okay. What's their position?
09:52:52 11	Q. Was he?	09:55:22 11	A. I don't know Brent's title. Paul Tucker is --
09:52:52 12	A. Yes, he was.	09:55:28 12	and, again, I don't know a specific title, but he is
09:52:54 13	Q. Okay. And thanks for making that	09:55:30 13	their senior operations manager.
09:52:54 14	clarification. In April of 2005 at the time of his	09:55:40 14	Q. And does Railserve have its own independent
09:52:58 15	accident was he an employee of Railserve, Inc.?	09:55:44 15	office location at the Deer Park Rail Terminal or is it
09:53:02 16	A. Yes, he was.	09:55:48 16	shared with someone?
09:53:02 17	Q. Okay. There was no other entity in which he	09:55:52 17	A. There's an office there --
09:53:06 18	was employed by or W-2'd from or anything like that?	09:55:54 18	Q. Okay.
09:53:14 19	A. No, sir.	09:55:54 19	A. -- that we work out of. When somebody from
09:53:36 20	Q. Okay. Does Deer Park Rail Terminal have any	09:55:58 20	Deer Park U.S. Development comes, they can also share
09:53:38 21	personnel who are operating -- strike that. Does Deer	09:56:02 21	space there. I do not know if there's somebody
09:53:46 22	Park Rail Terminal, Inc. have any personnel working at	09:56:06 22	permanently assigned to that location or not.
09:53:52 23	the Deer Park Rail Terminal as far as you know?	09:56:10 23	Q. Okay. But that -- is that space provided to
09:53:54 24	A. I do not know.	09:56:14 24	Railserve by Deer Park Rail Terminal?
09:53:58 25	Q. Okay. Do you know if Deer Park Rail Terminal,	09:56:16 25	A. Yes, it is.

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09:56:18 1	Q. Okay. Do y'all have to pay a lease or any	09:58:48 1	Q. Velsicol Chemical Corp.?
09:56:20 2	money for using that space?	09:58:50 2	A. I don't know that.
09:56:24 3	A. No. That's part of the contract.	09:58:52 3	Q. A&R Transport Inc.?
09:56:48 4	Q. Okay. Have you ever seen a list of customers	09:58:54 4	A. I don't know that.
09:56:52 5	that Deer Park Rail Terminal, Inc. has for the	09:58:54 5	Q. BASF Corporation?
09:56:56 6	operations at the Deer Park Rail Terminal?	09:58:56 6	A. I don't know that.
09:56:58 7	A. No, I have not.	09:58:58 7	Q. Resolution Performance Products, L.L.C.?
09:57:10 8	Q. Okay. And I'm going to ask -- go down this	09:59:00 8	A. I don't know that.
09:57:12 9	list and it's going to be the same question for each	09:59:02 9	Q. General American Field Services Corporation?
09:57:16 10	entity on this list. Are you aware that Deer Park Rail	09:59:04 10	A. I don't know that.
09:57:20 11	Terminal, Inc. provides services -- let me ask that	09:59:06 11	Q. Chevron Phillips Chemical Company?
09:57:28 12	question again because I got lost in that one. Sorry.	09:59:08 12	A. I don't know that.
09:57:32 13	A. That's all right.	09:59:08 13	Q. The Burlington North and Santa Fe Railroad
09:57:44 14	Q. And this question I'm asking I'm talking about	09:59:12 14	Company?
09:57:46 15	the services that Deer Park Rail Terminal, Inc.	09:59:12 15	A. I know they will operate with them, but I do
09:57:48 16	provides for at the Deer Park Rail Terminal. Are you	09:59:16 16	not believe they have a contract with them for services
09:57:52 17	aware that Deer Park Rail Terminal provides services	09:59:18 17	at that area.
09:57:58 18	for a company known as Air Products, Inc.?	09:59:24 18	Q. If U.S. Development or someone from Deer Park
09:58:02 19	MR. NEUER: Form.	09:59:26 19	Rail Terminal testifies that they have a contract with
09:58:02 20	A. I do not know that.	09:59:30 20	Burlington North, Northern and Santa Fe Railroad
09:58:04 21	Q. (BY MR. COLLINS) Okay. BP Amoco Chemicals?	09:59:34 21	Company, will you have any specific information of
09:58:04 22	MR. NEUER: Form.	09:59:36 22	which you have personal knowledge to dispute that?
09:58:08 23	A. I do not know that.	09:59:40 23	A. Can you rephrase that, please?
09:58:08 24	MR. NEUER: Can I just have a form	09:59:42 24	Q. If it is found out later on that or the
09:58:08 25	objection?	09:59:46 25	testimony shows that Deer Park Rail Terminal, Inc. does
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09:58:08 1	MR. COLLINS: Yeah, you can have a form	09:59:50 1	indeed have a contract with the Burlington Northern and
09:58:10 2	running objection for this.	09:59:54 2	Santa Fe Railroad Company, do you have any specific
09:58:10 3	Q. (BY MR. COLLINS) Bayport Rail Terminal, Inc.?	09:59:58 3	information to dispute that?
09:58:14 4	A. I do not know that.	10:00:02 4	MR. NEUER: Form.
09:58:14 5	Q. Celanese, Limited?	10:00:04 5	Q. (BY MR. COLLINS) You can go ahead and answer
09:58:16 6	A. I do not know that.	10:00:06 6	it.
09:58:18 7	Q. The Dow Chemical Company?	10:00:06 7	A. No. Our contract is limited solely to Deer
09:58:20 8	A. I don't know that.	10:00:08 8	Park Rail Terminal, so I don't know.
09:58:22 9	Q. Intercontinental Terminal Company?	10:00:10 9	Q. So --
09:58:22 10	A. I don't know that.	10:00:10 10	A. I don't know if they do or don't have a
09:58:22 11	Q. Do you know what the Intercontinental Terminal	10:00:12 11	specific contract with any entity.
09:58:26 12	Company is?	10:00:14 12	Q. Okay. That's fine. Munoz, same question as
09:58:26 13	A. No, sir.	10:00:18 13	before for Munoz Enterprises, Inc.?
09:58:26 14	Q. Okay. The Lubrizol Corporation?	10:00:22 14	A. I don't know.
09:58:28 15	A. I don't know that.	10:00:22 15	Q. Sunoco, Inc. R&M?
09:58:30 16	Q. Occidental Chemical Corporation?	10:00:24 16	A. I don't know.
09:58:32 17	A. I don't know that.	10:00:24 17	Q. Total Petrochemicals USA, Inc.?
09:58:32 18	Q. PM Ag Products?	10:00:28 18	A. I don't know.
09:58:34 19	A. I don't know that.	10:00:28 19	Q. Innovene USA, L.L.C.?
09:58:36 20	Q. Rohm & Haas Company, Inc.?	10:00:32 20	A. I don't know.
09:58:38 21	A. I don't know that.	10:00:32 21	Q. And Shell Oil Products?
09:58:40 22	Q. I believe this is Rohmax, R O H M A X, Inc.?	10:00:34 22	A. I know they do something with them, but again
09:58:44 23	A. I don't know that.	10:00:36 23	I don't know what.
09:58:44 24	Q. Vopak Logistics Services, Inc.?	10:00:44 24	Q. Okay. Have you ever seen one of the terminal
09:58:48 25	A. I don't know that.	10:00:46 25	services agreements with Deer Park Rail Terminal has

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10:00:52 1	with any of its customers?	10:03:56 1 Q. (BY MR. COLLINS) Yeah. Is interchange a
10:00:54 2	A. No, sir.	10:03:56 2 term-of-art used in the rail service industry?
10:01:14 3	Q. Okay. Does Railserve at the Deer Park Rail	10:04:00 3 A. Yes, it means that the Port Terminal will hand
10:01:18 4	Terminal do -- it does switching, correct?	10:04:02 4 off a collection of cars to those -- to whatever
10:01:22 5	A. Yes.	10:04:04 5 railroad it connects with.
10:01:22 6	Q. Track maintenance?	10:05:26 6 Q. Okay. Do you have an understanding of how
10:01:24 7	A. No, sir.	10:05:26 7 U.S. -- strike that. Do you have an understanding of
10:01:24 8	Q. Car cleaning?	10:05:30 8 how Deer Park Rail Terminal makes their money for the
10:01:24 9	A. No, sir.	10:05:38 9 cars it handles at the Deer Park Rail Terminal?
10:01:26 10	Q. Car loading and unloading?	10:05:40 10 MR. NEUER: Form.
10:01:28 11	A. No, sir.	10:05:42 11 A. It's just an anecdotal understanding that it's
10:01:28 12	Q. Car inspection?	10:05:46 12 for storing cars.
10:01:28 13	A. No, sir.	10:05:48 13 Q. (BY MR. COLLINS) And providing switching
10:01:28 14	Q. Car repair?	10:05:48 14 operations, right?
10:01:30 15	A. No, sir.	10:05:52 15 A. No, sir.
10:01:30 16	Q. Railcar inventory management?	10:05:54 16 Q. Part of the storage includes switching
10:01:36 17	A. Can you ask that further?	10:05:56 17 operations, correct?
10:01:40 18	Q. Does rail -- does Railserve provide rail car	10:05:58 18 MR. NEUER: Form.
10:01:44 19	inventory management services for the Deer Park Rail	10:05:58 19 A. Your question is still in the context of how
10:01:48 20	Terminal, Inc.?	10:06:00 20 does Deer Park Rail Terminal receive revenue?
10:01:48 21	MR. NEUER: Form.	10:06:04 21 Q. (BY MR. COLLINS) Yes.
10:01:52 22	A. We provide information that Deer Park will	10:06:06 22 A. I don't believe switching is a part of that.
10:01:54 23	place into their system.	10:06:12 23 Q. Okay. Well, the customer doesn't get a
10:01:56 24	Q. (BY MR. COLLINS) Okay. What information do	10:06:14 24 separate bill for switching services, right?
10:01:58 25	you provide?	10:06:16 25 A. Correct, they do not. Well, okay, you're
Page 39		Page 41
10:01:58 1	A. The car number and the spot that it's on.	10:06:18 1 asking me how Deer Park sends invoices. I don't know
10:02:02 2	Q. Okay.	10:06:22 2 how they send invoices, but I can't imagine they would.
10:02:02 3	A. We don't provide the software.	10:06:26 3 Q. Okay. They get one charge essentially which
10:02:06 4	Q. Okay. And you provide the actual data to go	10:06:28 4 my understanding your testimony is they get charged for
10:02:08 5	into the software, right?	10:06:32 5 storing there, correct?
10:02:10 6	A. Yes.	10:06:32 6 A. That's my understanding. Again, I don't know
10:02:10 7	Q. Okay. Does Railserve perform trailer handling	10:06:34 7 specifically how they make arrangements. I know
10:02:14 8	services for Deer Park Rail Terminal?	10:06:36 8 when -- in the industry when you have to store cars, if
10:02:16 9	A. No, sir.	10:06:40 9 we have to store locomotives --
10:02:16 10	Q. Checkpoint services?	10:06:40 10 Q. Uh-huh.
10:02:22 11	A. No, sir.	10:06:42 11 A. -- that is charged on a per car per day fee.
10:03:14 12	Q. Are you aware that Deer Park Rail Terminal	10:06:46 12 Now, how they do it in particular, I can only assume
10:03:18 13	indicates in their website that it services railroads	10:06:48 13 it's the same way as the industry standard. But,
10:03:26 14	to the Port Terminal Railroad with an interchange to	10:06:52 14 again, I don't know specifically how they do it.
10:03:32 15	Union Pacific and BNSF?	10:06:54 15 Q. But it's not a situation where you ultimately
10:03:32 16	A. I do not know that.	10:06:56 16 get paid by the customer, right?
10:03:34 17	Q. What is your understanding of the word	10:06:58 17 A. Oh, absolutely not. We have one contract
10:03:36 18	interchange in that context?	10:07:02 18 directly with Deer Park Rail Terminal.
10:03:40 19	A. Can you restate the context, please?	10:07:02 19 Q. And they pay you regardless if they get paid
10:03:42 20	Q. It basically says Port Terminal Railroad	10:07:06 20 by the customer?
10:03:44 21	Association with interchange to the Union Pacific and	10:07:08 21 A. That's correct.
10:03:44 22	BNSF?	10:07:08 22 Q. Okay. So, I mean, I can't envision a
10:03:50 23	MR. NEUER: Form.	10:07:10 23 situation where, you know, their customers would be
10:03:52 24	A. And your question to me is how do I interpret	10:07:14 24 getting an invoice for storage, switching, coupling. I
10:03:54 25	the word interchange?	10:07:18 25 mean, it's not itemized like that, correct?

11 (Pages 38 to 41)

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10:07:22 1	A. I couldn't imagine it being that way.	10:10:40 1	Q. Okay. And would you agree that the
10:07:32 2	Q. Okay. And do you have any sense of -- is Deer	10:10:44 2	remuneration Railserve is receiving from Deer Park Rail
10:07:42 3	Park Rail Terminal providing an exclusive service for a	10:10:52 3	Terminal, Inc. is a fixed charge per month?
10:07:46 4	set number of entities?	10:11:04 4	A. Yes.
10:07:48 5	MR. NEUER: Form.	10:11:04 5	Q. And that has increased over time, but that's
10:07:50 6	A. What do you mean by exclusive?	10:11:06 6	based on the man-hours, correct?
10:07:52 7	Q. (BY MR. COLLINS) Well, I mean, anybody who is	10:11:12 7	A. Yes, sir.
10:07:54 8	willing to pay to have their car brought there and	10:12:20 8	Q. Okay. Are there any warehouses on the
10:07:58 9	stored can have it done, correct?	10:12:24 9	property of the Deer Park Rail Terminal?
10:08:00 10	MR. NEUER: Form.	10:12:28 10	A. Not to the best of my knowledge.
10:08:02 11	A. I don't know.	10:13:00 11	MR. COLLINS: I want to take a short
10:08:30 12	Q. (BY MR. COLLINS) Do you know whose cargos --	10:13:00 12	break and look at a couple of notes and I think we
10:08:34 13	let me strike that. The cargo that is in the cars if	10:13:04 13	might be done.
10:08:40 14	they're not empty is owned by the various customers of	10:13:04 14	THE VIDEOGRAPHER: It's 10:13, we're off
10:08:42 15	Deer Park Rail Terminal, right?	10:13:06 15	the record.
10:08:46 16	MR. NEUER: Form.	10:15:28 16	(Brief recess.)
10:08:46 17	A. I'm sorry, I don't know.	10:15:28 17	THE VIDEOGRAPHER: Back on the record at
10:08:48 18	Q. (BY MR. COLLINS) Okay. Do you know who owns	10:15:40 18	10:15.
10:08:50 19	the cars?	10:16:06 19	Q. (BY MR. COLLINS) Are you familiar with
10:08:54 20	A. No, sir.	10:16:06 20	Railserve's website?
10:08:54 21	Q. Are you aware that any of the cars are rented	10:16:08 21	A. Yes, sir.
10:08:56 22	from one entity for use by another entity?	10:16:16 22	Q. Okay. Did you have any role in its creation
10:09:00 23	MR. NEUER: Form.	10:16:18 23	or the information contained in there?
10:09:00 24	A. That's a fairly common industry practice.	10:16:20 24	A. No, sir.
10:09:04 25	Q. (BY MR. COLLINS) Okay. And, in fact, the car	10:16:20 25	Q. Okay. How often do you look at the website?
Page 43		Page 45	
10:09:08 1	that -- are you aware that the car that Alex Benavidez	10:16:22 1	A. Do I personally look at the website?
10:09:12 2	was on was identified as a GATX car. correct?	10:16:26 2	Q. Yeah.
10:09:16 3	A. I would have to look at the accident report to	10:16:26 3	A. Virtually never.
10:09:18 4	confirm that.	10:16:26 4	(Plaintiff's Exhibit 2 marked.)
10:09:20 5	Q. Okay. Do you have an understanding of cars	10:16:28 5	Q. (BY MR. COLLINS) Okay. I'm going to hand you
10:09:22 6	with the designation GATX, are they typically owned by	10:16:28 6	what is Exhibit 2. Won't you just kind of skim through
10:09:26 7	a certain entity and leased to another entity?	10:16:54 7	that. And the question is going to be do you recognize
10:09:30 8	MR. NEUER: Form.	10:17:00 8	that to be -- Exhibit Number 2 to be a printout of Rail
10:09:32 9	A. Are you asking as a generic industry practice?	10:17:06 9	Service's website?
10:09:36 10	Q. (BY MR. COLLINS) Yes.	10:17:06 10	A. You asked if this is a printout of Rail
10:09:38 11	A. Yes.	10:17:08 11	Service's website?
10:09:38 12	Q. Okay. And what's the company with the GATX	10:17:10 12	Q. Yeah.
10:09:40 13	that typically leases those cars? Who owns them?	10:17:10 13	A. What is Rail Services?
10:09:42 14	A. Who owns GATX?	10:17:12 14	Q. Railserve, I'm sorry. Railserve, Inc.?
10:09:46 15	Q. Yes.	10:17:12 15	A. Yes.
10:09:46 16	A. I'm sorry, I don't know.	10:17:20 16	Q. Okay.
10:09:48 17	Q. But GATX is a company, correct?	10:17:20 17	A. It is our website.
10:09:48 18	A. Yes, it is.	10:17:20 18	MR. COLLINS: All right. I'll pass the
10:09:48 19	Q. Okay.	10:17:22 19	witness.
10:09:50 20	A. GATX is a destination in the rail	10:17:24 20	MR. NEUER: We'll reserve ours.
10:09:54 21	classification code that represents a company. I just	10:17:24 21	MR. COLLINS: Okay.
10:09:56 22	don't know who that company is specifically.	10:17:24 22	THE VIDEOGRAPHER: It's 10:17, we're off
10:09:58 23	Q. Okay. All right. But your understanding is	10:17:26 23	the record. This is the end of tape 1.
10:10:02 24	that they're in the business of leasing cars, right?	24	
10:10:04 25	A. Yes.	25	

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1 CHANGES AND SIGNATURE
 2
 3 PAGE LINE CHANGE REASON

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1 CAUSE NO. 2005-38821
 2 ALEJANDRO BENAVIDEZ) IN THE DISTRICT COURT OF
 3)
 4 VS.) HARRIS COUNTY, TEXAS
 5)
 6 RAILSERVE, INC.) 234TH JUDICIAL DISTRICT
 7 REPORTER'S CERTIFICATION
 8 DEPOSITION OF TIMOTHY BENJAMIN
 9 January 18, 2006
 10 I, Jeanne C. Pearl, Certified Shorthand Reporter
 11 in and for the State of Texas, hereby certify to the
 12 following:
 13 That the witness, TIMOTHY BENJAMIN, was duly
 14 sworn by the officer and that the transcript of the
 15 oral deposition is a true record of the testimony given
 16 by the witness;
 17 That the deposition transcript was submitted on
 18 , to the witness or to the attorney
 19 for the witness for examination, signature and return
 20 to me by ;
 21 That the amount of time used by each party at the
 22 deposition is as follows:
 23 Mr. Wayne D. Collins - 1 HR: 4 MINS
 24 That pursuant to information given to the
 25 deposition officer at the time said testimony was
 taken, the following includes counsel for all parties

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1 I, TIMOTHY BENJAMIN, have read the foregoing
 2 deposition and hereby affix my signature that same is
 3 true and correct, except as noted above.
 4
 5 TIMOTHY BENJAMIN
 6
 7 THE STATE OF)
 8 COUNTY OF)
 9 Before me, , on this day
 10 personally appeared TIMOTHY BENJAMIN, known to me (or
 11 proved to me under oath or through)
 12 (description of identity card or other document) to be
 13 the person whose name is subscribed to the foregoing
 14 instrument and acknowledged to me that they executed
 15 the same for the purposes and consideration therein
 16 expressed.
 17 Given under my hand and seal of office
 18 this day of , 2006.
 19
 20 NOTARY PUBLIC IN AND FOR
 21 THE STATE OF TEXAS
 22
 23
 24
 25

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1 of record:
 2 Mr. Wayne D. Collins, Attorney for Plaintiff;
 3 Mr. Raymond A. Neuer, Attorney for Defendant.
 4
 5 I further certify that I am neither counsel for,
 6 related to, nor employed by any of the parties or
 7 attorneys in the action in which this proceeding was
 8 taken, and further that I am not financially or
 9 otherwise interested in the outcome of the action.
 10 Further certification requirements pursuant to
 11 Rule 203 of TRCP will be certified to after they have
 12 occurred.
 13 Certified to by me this 24th day of January,
 14 2006.
 15
 16
 17 JEANNE C. PEARL, Texas CSR 456
 18 Expiration: 12/31/06
 19 LEGALINK - HOUSTON
 20 Firm Registration Number 210
 21 1235 North Loop West, Suite 510
 22 Houston, Texas 77008
 23 (713) 426-0400
 24
 25

13 (Pages 46 to 49)

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1 FURTHER CERTIFICATION UNDER RULE 203 TRCP

2

3 The original deposition was/was not returned to
4 the deposition officer on ;
5 If returned, the attached Changes and Signature
6 page contains any changes and the reasons therefor;
7 If returned, the original deposition was delivered
8 to , Custodial Attorney;
9 That § is the deposition officer's
10 charges to the Custodial Attorney for preparing the
11 original deposition transcript and any copies of
12 exhibits;

13 That the deposition was delivered in accordance
14 with Rule 203.3, and that a copy of this certificate
15 was served on all parties shown herein on and filed
16 with the Clerk.

17 Certified to by me this day of ,
18 2006.

19

20

21

22 JEANNE C. PEARL, Texas CSR 456
Expiration Date: 12/31/06
23 LEGALINK - HOUSTON
Firm Registration Number 210
24 1235 North Loop West, Suite 510
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25 (713) 426-0400

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